Simon v. Adzilla, Inc [New Media] et al Doc. 47

SEAN A. LINCOLN (State Bar No. 136387)
salincoln@orrick.com
I. NEEL CHATTERJEE (State Bar No. 173985)
nchatterjee@orrick.com
MONTE COOPER (State Bar No. 196746)
mcooper@orrick.com
THERESA A. SUTTON (State Bar No. 211857)
tsutton@orrick.com
YVONNE P. GREER (State Bar No. 214072)
ygreer@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: 650-614-7400
Facsimile: 650-614-7401

Attorneys for Plaintiffs
THE FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG, Plaintiffs, v. CONNECTU, INC. (formerly known as CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, and WAYNE CHANG, Defendants.	Case No. 5:07-CV-01389-JW **[PROPOSED] FORM OF RELEASE OF CLAIMS BY FACEBOOK, INC. AND MARK ZUCKERBERG**

Dockets.Justia.com

This Release of Claims ("Release") shall be effective upon approval by the Court in *Facebook, Inc. and Mark Zuckerberg v. ConnectU, Inc., et al*, Case No. 5:07-cv-01389-JW (the "Effective Date").

1. Facebook, Inc. for itself and its current and former officers, directors, partners, limited partners, agents, attorneys, servants, employees, independent representatives, shareholders, predecessors, successors, assigns, affiliates, parent and subsidiary corporations, and any and all persons, firms, corporations and partnerships which they control or which claim through them, and each of their legal assigns, hereby releases, acquits, covenants not to sue, and forever discharges ConnectU, Inc., Tyler Winklevoss, Cameron Winklevoss, Divya Narendra, and their current and former officers, directors, partners, limited partners, agents, attorneys, servants, employees, independent representatives, shareholders, predecessors, successors, assigns, affiliates, parent and subsidiary corporations, and any and all persons, firms, corporations and partnerships which they control or which claim through them, of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities and obligations of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, that were, or could have been asserted in the Lawsuits.

2. Mark Zuckerberg, for himself and his current and former partners, limited partners, agents, attorneys, servants, employees, independent representatives, assigns, affiliates, and any and all persons, firms, corporations and partnerships which he controls or which claim through him, and each of their legal assigns, hereby releases, acquits, covenants not to sue, and forever discharges ConnectU, Inc., Tyler Winklevoss, Cameron Winklevoss, Divya Narendra, and their current and former officers, directors, partners, limited partners, agents, attorneys, servants, employees, independent representatives, shareholders, predecessors, successors, assigns, affiliates, parent and subsidiary corporations, and any and all persons, firms, corporations and partnerships which they control or which claim through them, of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities and obligations of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, that were, or could have been asserted in the Lawsuits.

3. Facebook, Inc. and Mark Zuckerberg acknowledge that there are or may be facts or circumstances related to the matters released in this Release of which they are not aware, and they further acknowledge that they may have suffered or might in the future suffer damages or other financial or other injury of which they are not aware or do not or cannot anticipate. Facebook, Inc. and Mark Zuckerberg further acknowledge that the facts, circumstances, damages, or injury, if known or suspected, might affect their willingness to enter into this Release or to agree to the terms set forth herein. Facebook, Inc. and Mark Zuckerberg nonetheless intend to enter into this Release and to agree to all of the terms set forth herein, and they specifically intend to give the releases set forth herein, notwithstanding the fact that the matters released include or might include claims based on unknown or unsuspected facts or circumstances or unknown or unsuspected damages or injury. Facebook, Inc. and Mark Zuckerberg intend that the releases set forth herein will apply to all matters within their scope, known or unknown, suspected or unsuspected except for any claims, rights, actions, or causes of action that arise out of, relate to, or are connected with the breach of any obligation of any of the Parties under this Release.

Facebook, Inc. and Mark Zuckerberg acknowledge that they are familiar with California Civil Code Section 1542, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM WOULD HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Facebook, Inc. and Mark Zuckerberg expressly, knowingly, and intentionally waive and relinquish any and all rights which they have under Section 1542 and any other similar state or federal statute, rule, or principle.

FACEBOOK, INC.

By: ______________________

Name: ______________________

Title: ______________________

Date: ______________________

MARK ZUCKERBERG

By: ______________________

Date: ______________________

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on July 9, 2008.

Dated: July 9, 2008

Respectfully submitted,

/s/ Yvonne P. Greer /s/

Yvonne P. Greer